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# Leases

SEE: Use authorizations.

# Linear projects

## Discussion on linear projects

Linear projects are communication, utility, or transportation facilities extending in a line between two points, including projects such as roads, railroads, bridges, natural gas or oil pipelines, water and sewer lines, outfalls and various communications cables. Linear projects may require special attention from the department because of their projected life, the high economic and public values often associated with them, their potential for environmental impacts, and their potential to cross aquatic lands numerous times. SEE ALSO: Bridges and roads; Utility lines; Outfalls.

A linear project is virtually always a nonwater-dependent use of state-owned aquatic lands. All statutes and guidance on nonwater-dependent uses in general also apply to linear projects. SEE ALSO: Nonwater-dependent uses.

Linear projects are often placed directly on aquatic lands, attached to other facilities such as bridges or poles, or installed in tubes or tunnels bored under aquatic lands. Linear projects range from small public road and utility crossings to major continuous transmission lines for highly profitable private businesses of state, national, or international scope.





Proponents for linear projects often wish to cross state-owned aquatic lands to maintain the continuity of their route. Proposed linear projects are sometimes consistent with aquatic land use plans, but just as often they are inconsistent with other uses of public lands and resources.

Historically, public and government sentiment promoted the development of linear projects which provide economically valuable services. The use of state-owned aquatic lands for such projects was seen as inherently acceptable or desirable, especially where project proponents could not practically avoid crossing these lands. At the same time, the value of submerged lands has often been difficult to determine. As a result, the Legislature has granted mandatory, discounted or even free use of state-owned aquatic lands for some public utilities.

In other cases, the department has not been aggressive in denying inappropriate rights-of-way or charging the full allowable amounts. Fees have been low, easements have been granted in perpetuity or for very long terms, and decisions for even large facilities have been treated as routine. In many cases, linear projects have been constructed on aquatic lands without obtaining state permission, and these now exist as trespasses.

When a linear project is proposed, the department must decide whether to grant an easement much like any other use authorization. If authorization is granted, the department must determine the term of the easement and how to address risk associated with the project. These decisions must be approached in a way that avoids imposing unacceptable constraints on the public's future use and enjoyment of the aquatic resources. The department's obligation is to recognize the long-term encumbrance created by an easement for a linear project, minimize damage to habitats, water and sediment quality, protect public amenities of state-owned aquatic lands, and ensure that its decisions maintain or increase the long-term value of these lands. SEE ALSO: Use authorizations; Public benefits.

Currently, the department is giving more attention to the granting of rights for linear projects on state-owned aquatic lands. It is attempting to ensure that only projects consistent with department land use plans and policies are authorized and to capture the true value of the publicly-owned lands and rights granted for the proposed use. One major new component of evaluating linear projects is understanding the diverse and evolving economic and market factors influencing these projects to better capture the true value.

In addition, the department is pursuing the creation of corridors to accommodate linear projects, rather than just allowing the placement of rights-of-ways in a location most expedient to the project proponent. Such corridors should be identified whenever possible as part of local land use plans, aquascape plans, and zoning codes.

Legal guidance may also come from state and federal regulatory and case law pertaining to utilities and communication facilities. Region staff should seek guidance from the Division if questions arise over legal rights to cross state-owned aquatic lands.

# LINEAR PROJECTS: AUTHORIZATION DECISIONS

## Discussion on linear projects: authorization decisions

Until more complete guidance is approved, Executive Management approval is required before making any formal or informal offer on a linear project to an applicant. Staff should direct a preliminary recommendation to their Region Manager for approval and for forwarding to Executive Management.

The decision on whether to grant an easement for a linear project should first consider the same issues as for other





nonwater-dependent uses. At a minimum, the project must be compatible with current or planned water-dependent uses in the area. As with all leases or easements, the department must identify the public values and benefits of the state-owned aquatic lands in question — for environmental protection, utilization of renewable resources, public access and recreation, and use for other purposes — and from which qualities these values and benefits derive. Then, the department can determine whether they will be reduced or enhanced by the linear project. SEE ALSO: Nonwater-dependent uses; Public benefits.

In addition, linear projects require greater review because of their long-term and geographically unusual nature. The amount of department resources committed to the review, the level of management attention, and the strictness of requirements on the project should be generally proportionate to the environmental, financial, geographic and temporal scale of the project.

In addition to nonwater-dependent standards, the following standards apply specifically to decisions on linear projects:

- Upland and aquatic program decisions on linear projects should be integrated whenever possible.

- The department should coordinate consideration of the upland and aquatic portions of the same project, preferably reviewing them simultaneously and preparing either matching documents or a single combined document. Valuation methodologies should be consistent between upland and aquatic programs, though the values for each portion of the project may not be identical.

- Given the long-term nature of most linear projects, the department must make a special effort to avoid serious or irrevocable environmental impacts, as well as commitments of aquatic lands which are likely to restrict other uses.

- The applicant must demonstrate that environmental impacts are insignificant, unlikely or repairable, and must meet mitigation requirements. Long-term commitments must be consistent with the longest-term appropriate land use plans available. To maintain future options, contract duration should be shortened where appropriate and contracts must include re-opener clauses to address unexpected environmental concerns. Restrictions caused by the project on other uses of aquatic lands will be considered when making decisions on whether to grant an easement and also on valuation.

- Easements must be for a limited term, with re-openers.

- No perpetual easements will be granted on state-owned aquatic lands. The standard easement term is thirty years or the life expectancy of the use or structure, whichever is shorter. Longer terms of up to 100 years may be granted for major public facilities. All easements must include re-openers coinciding with regulatory requirements or at least every ten years to address unexpected environmental impacts.

- A linear project should be located on the most feasible site with the least impacts to the environment and to other uses of aquatic lands. This may mean locating a linear project upland.

- An application for a linear project must include discussion of all reasonable alternatives so the department can consider the best location or whether the project even needs to cross state-owned aquatic lands. Applicants should outline, and staff should investigate, any alternatives which appear feasible. The department should consider its own and other agencies' land use plans, the future management of state-owned lands, any other existing or planned rights-of-way and leases, any specially designated areas, and any ecological sensitivities. In particular, the department must carefully





weigh whether concentration or separation of different rights-of-way will have the least impacts.

- The department will require projects to share the same corridor when they are compatible and the concentration of projects will not cause greater impacts than separate projects.

Like other use authorization decisions, the department should use all available means to reduce a linear projects' environmental and financial risks to the public. Such means can include gathering more information, requiring appropriate studies, shortening contract duration, establishing contract re-openers, and requiring indemnification, insurance, and bonding. During review, the department must clearly understand and describe any remaining uncertainties and the severity of any environmental or financial risks or other concerns. The department should be involved at the early stages of a proposal, and should seek to coordinate with other government agencies.

Many other government entities may have some involvement in linear projects as project sponsors, regulators, land use planners, or as proprietary managers of neighboring public lands. The applicant must receive any required permits from other agencies before an easement will be granted. Meeting the needs of those other agencies is the task of the applicant, but early involvement by the department in the project proposal should help harmonize decisions and help meet the department's proprietary requirements.

In some cases, based on its proprietary goals and responsibilities, the department may reach a different conclusion about a linear project than a regulatory or service-delivery agency. This is appropriate given the differing statutes and perspectives of each agency. Within the bounds of the relevant statutes, the department maintains final authority over use and management of state-owned aquatic lands. SEE ALSO: Regulatory agencies and permits.

If a linear project is in trespass, the decision to grant an easement will be based on whether the department would approve the project as a new proposal. For example, if a local government wished to remodel a bridge which was originally built without an easement, the newly remodeled bridge would need to have an easement and meet current standards. SEE ALSO: Unauthorized uses.

The department should seek a match between the objectives of the department and project proponents. Review and valuation methodologies should be consistent across similar projects. The department's final decision, however, must consider the unique elements of each project, and must be based solely on protecting and enhancing the many values and benefits of state-owned aquatic lands for the public.

Reversion to the state will be mandatory upon non-use or use of a right-of-way for purposes other than those granted.

# LINEAR PROJECTS: PUBLIC PROJECTS

## Discussion on linear projects: public projects

More than most other uses, linear projects are very often owned by or serve public agencies, such as the Department of Transportation, local governments or utility districts. Staff should give greater and more prompt attention to such projects to facilitate public benefits provided by those agencies.

This does not mean that public agencies will be granted easements for linear projects without proper review. The department must still require terms in the easement to provide for navigation and commerce, ensure environmental protection, and provide for the department's other statutory obligations. Also, the projects must be compatible with current and potential water-dependent uses in the area and must meet all mitigation requirements.





Unless otherwise provided for in statute, public agencies must pay appropriate rent. In determining or negotiating rent, the department may make allowances for the public benefits provided by the project. However, especially if the project is undertaken by a local jurisdiction and not a state agency, the department must still require reasonable rent in exchange for use of state-owned aquatic lands.

# LINEAR PROJECTS: VALUATION

## Discussion on linear projects: valuation

As a nonwater-dependent use, a linear project must pay full market rent to the state. Because of the unusual geographic nature of such a project, and the use of bedlands which are not sold or rented in a private market, it can be difficult to determine a market rate. SEE ALSO: Nonwater-dependent uses; Valuation.

It is the department's obligation to obtain the full legally allowable value for the public in exchange for an easement on public lands, especially considering the high value such easements can provide to a private business. This will usually be done through negotiations.

In addition to the department's general valuation standards, when valuating linear projects the department must:

- Consider the value of services or facilities that may be provided by the department, such as an existing corridor.
- Consider the value, both financial and as a benefit or service, of the proposed linear project to every party, including the operator and users, clearly identifying who realizes that value and how.
- Consider applicable valuation examples that might be found elsewhere on state-owned aquatic lands or

state-owned uplands, or from other agencies, other states or other landowners.

- Consider changes in service and income that may occur for this linear project in the future that might affect the value appropriately received by the state.

- Maintain the contractual rights and practical capacity to negotiate additional compensation for future increases in service from the project.

- Use consistent valuation methodologies between upland and aquatic programs, though the values for each portion of the project may not be identical.

- Require payment of full market value rent from each project separately, even when they are concentrated in a combined area or corridor.

# Log booming and storage

**RCW 79.90.465: Definitions.**
(4) "Log storage" means the water storage of logs in rafts or otherwise prepared for shipment in water-borne commerce, but does not include the temporary holding of logs to be taken directly into a vessel or processing facility.
(5) "Log booming" means placing logs into and taking them out of the water, assembling and disassembling log rafts before or after their movement in water-borne commerce, related handling and sorting activities taking place in the water, and the temporary holding of logs to be taken directly into a processing facility. "Log booming" does not include the temporary holding of logs to be taken directly into a vessel.

**WAC 332-30-145: Booming, rafting and storage of logs.**





All requirements in this section shall apply to the department and to port districts managing aquatic lands under a management agreement (WAC 332-30-114).
(1) Unless specifically exempted in writing, all log dumps located on aquatic lands, or operated in direct association with booming grounds on aquatic land, must provide facilities for lowering logs into the water without tumbling, which loosens the bark. Free rolling of logs is not permitted.
(2) Provision must be made to securely retain all logs, chunks, and trimmings and other wood or bark particles of significant size within the leased area. Lessee will be responsible for regular cleanup and upland disposal sufficient to prevent excessive accumulation of any debris on the leased area.
(3) Unless permitted in writing, aquatic land leased for booming and rafting shall not be used for holding flat rafts except:
(a) Loads of logs averaging over 24" diameter.
(b) Raft assembly, disassembly and log sort areas.
(4) Unless permitted in writing, grounding of logs or rafts is not allowed on tidelands leased for booming and rafting. However, tidelands which were leased for booming and rafting prior to January 1, 1980, are exempt from this provision.
(5) No log raft shall remain on aquatic land for more than one year, unless specifically authorized in writing.
(6) For leases granted to serve the general needs of an area such as an island, the leased area shall be made available to others for booming and rafting and at a reasonable charge.
(7) Areas within a lease boundary meeting the definition of log booming are water- dependent uses. The rent for these areas will be calculated according to WAC 332-30-123.
(8) Areas leased for log storage shall have the rent calculated by applying a state-wide base unit rent per acre. Temporary holding of logs alongside a vessel for the purpose of loading onto the vessel is neither booming nor storage.
(9) The base unit rent, application to existing leases, and subsequent annual rents will be determined as provided for water-dependent uses under WAC 332-30-123 except for the following modifications:
(a) A formula rental calculation will be made for each such area leased as of July 1, 1984, as though the formula applied on July 1, 1984.

(b) The assessment for an upland parcel shall not be used when the following situations exist:

(i) The parcel is not assessed.

(ii) The size of the parcel in acres or square feet is not known.

(c) When necessary to select an alternative upland parcel, the nearest assessed waterfront parcel shall be used if not excluded by the criteria under (b) of this subsection.

(d) Because of the large size and shape of many log storage areas, there may be more than one upland parcel that could be used in the formula. The department shall treat such multiple parcel situations by using:

(i) The per unit value of each upland parcel applied to its portion of the lease area. If it is not possible or feasible to delineate all portions of the lease area by extending the boundaries of the upland parcel, then;

(ii) The total of the assessed value of all the upland parcels divided by the total acres of all the upland parcels shall be the per unit value applied in the formula.

(e) The total formula rents divided by the total acres under lease for log storage equals the annual base unit rent for fiscal years 1985-1989. That figure is $171.00 per acre.

(f) For purposes of calculating stairstepping of rentals allowed under WAC 332-30-123, the base unit rent multiplied by the number of acres shall be the formula rent. In cases of mixed uses, the log storage formula rent shall be added to the formula rent determinations for the other uses under leases before applying the criteria for stairstepping.

(g) Inflation adjustments to the base rent shall begin on July 1, 1990.

(10) On July 1, 1989, and each four years thereafter, the department shall establish a new base unit rent.

(a) The new base rent will be the previous base rent multiplied by the result of dividing the average water-dependent lease rate per acre for the prior fiscal year by the average water-dependent lease rate per acre for the fiscal year in which the base unit rent was last established. For example, the formula for the base unit rent for fiscal year 1990 would be:

FY90 BUR= FY85 BUR x (FY89 AWLR) (FY85 AWLR)





(b) When necessary to calculate the average water-dependent lease rate per acre for a fiscal year, it shall be done on or near July 1. The total formula rent plus inflation adjustments divided by the total acres of water-dependent uses affected by the formula during the prior fiscal year shall be the prior fiscal year's average.

(11) If portions of a log storage lease area are open and accessible to the general public, no rent shall be charged for such areas provided that:

(a) The area meets the public use requirements under WAC 332-30-130(9);

(b) Such areas are in a public use status for a continuous period of three months or longer during each year;

(c) The lease includes language addressing public use availability or is amended to include such language;

(d) The department approves the lessee's operations plan for public use, including safety precautions;

(e) Changes in the amount of area and/or length of time for public use availability shall only be made at the time of rental adjustment to the lease; and

(f) Annual rental for such areas will be prorated by month and charged for each month or part of a month not available to the general public.

## Discussion on log booming and storage

Log booming is a water-dependent use, while log storage is a water-oriented use. Unlike other water-oriented uses, however, log storage uses a variation of the water-dependent rent formula (see below). Temporary holding of logs in the water to load them directly into a vessel is neither booming nor storage, and does not involve a lease. SEE ALSO: Water-dependent uses; Water-oriented uses.

For both log booming and log storage, the lessee must avoid excessive accumulation of wood debris on state-owned aquatic lands. Accumulated wood waste from historic log booming and storage operations can be a serious environmental problem in both fresh and marine waters. In some cases, the wood waste has been found up to 15 feet in depth beneath some operations. Because salinity affects

differently the components of different wood, chemical pollution and habitat damage can vary greatly from site to site. No guidance on this problem currently exists from regulatory agencies, although the Department of Ecology is currently identifying issues under MTCA and the Clean Water Act, and expects guidance to be available soon.

# LOG BOOMING AND STORAGE: LEASING LANDS FOR LOG BOOMING

### RCW 79.94.280: First class unplatted tide or shore lands-- Lease preference right to upland owners--Lease for booming purposes.

The department of natural resources is authorized to lease to the abutting upland owner any unplatted first class tide or shore lands. The department shall, prior to the issuance of any lease under the provisions of this section, fix the annual rental for said tide or shore lands and prescribe the terms and conditions of the lease. No lease issued under the provisions of this section shall be for a longer term than ten years from the date thereof, and every such lease shall be subject to termination upon ninety days' notice to the lessee in the event that the department shall decide that it is in the best interest of the state that such tide or shore lands be surveyed and platted. At the expiration of any lease issued under the provisions of this section, the lessee or his successors or assigns shall have a preference right to re-lease the lands covered by the original lease or any portion thereof, if the department shall deem it to be in the best interests of the state to re-lease the same, for succeeding periods not exceeding five years each at such rental and upon such terms and conditions as may be prescribed by said department. In case the abutting uplands are not improved and occupied for residential purposes and the abutting upland owner has not filed an application for the lease of such lands, the department may lease the same to any person for booming purposes under the terms and conditions of this section: PROVIDED, That failure to use for booming purposes any lands leased under this section for such purposes for a period of one year shall work a forfeiture of such lease and such land shall revert to the state without any notice to





the lessee upon the entry of a declaration of forfeiture in the records of the department of natural resources. [1982 1st ex.s. c 21 § 113.]

### RCW 79.94.290: Second class tide or shore lands--Lease for booming purposes.

The department of natural resources is authorized to lease any second class tide or shore lands, whether reserved from sale, or from lease for other purposes, by or under authority of law, or not, except any oyster reserve containing oysters in merchantable quantities, to any person, for booming purposes, for any term not exceeding ten years from the date of such lease, for such annual rental and upon such terms and conditions as the department may fix and determine, and may also provide for forfeiture and termination of any such lease at any time for failure to pay the fixed rental or for any violation of the terms or conditions thereof. The lessee of any such lands for booming purposes shall receive, hold, and sort the logs and other timber products of all persons requesting such service and upon the same terms and without discrimination, and may charge and collect tolls for such service not to exceed seventy-five cents per thousand feet scale measure on all logs, spars, or other large timber and reasonable rates on all other timber products, and shall be subject to the same duties and liabilities, so far as the same are applicable, as are imposed upon boom companies organized under the laws of the state: PROVIDED, That failure to use any lands leased under the provisions of this section for booming purposes for a period of one year shall work a forfeiture of such lease, and such lands shall revert to the state without any notice to the lessee upon the entry of a declaration of forfeiture in the records of the department. At the expiration of any lease issued under the provisions of this section, the lessee shall have the preference right to re- lease the lands covered by his original lease for a further term, not exceeding ten years, at such rental and upon such terms and conditions as may be prescribed by the department of natural resources. [1982 1st ex.s. c 21 § 114.]

## Discussion on log booming and storage: leasing lands for log booming

In general, log booming is allowed on first class tidelands or shorelands only after the abutting upland owner has failed to lease the lands. For more information on these preference rights, SEE ALSO: Use authorizations.

## LOG BOOMING AND STORAGE: RENT FOR LOG STORAGE

### RCW 79.90.485: Log storage rents.

(1) Until June 30, 1989, the log storage rents per acre shall be the average rents the log storage leases in effect on July 1, 1984, would have had under the formula for water-dependent leases as set out in RCW 79.90.480, except that the aquatic land values shall be thirty percent of the assessed value of the abutting upland parcels exclusive of improvements, if they are assessed. If the abutting upland parcel is not assessed, the nearest assessed upland parcel shall be used.
(2) On July 1, 1989, and every four years thereafter, the base log storage rents established under subsection (1) of this section shall be adjusted in proportion to the change in average water-dependent lease rates per acre since the date the log storage rates were last established under this section.
(3) The annual rent shall be adjusted by the inflation rate each year in which the rent is not determined under subsection (1) or (2) of this section.
(4) If the lease provides for seasonal use so that portions of the leased area are available for public use without charge part of the year, the annual rent may be discounted to reflect such public use in accordance with rules adopted by the board of natural resources. [1984 c 221 § 8.]

## Discussion on log booming and storage: rent for log storage

Unlike most water-oriented uses, log storage is charged rent based on this variation of the water-dependent rent formula.





# Logs, salvage

## Discussion on logs, salvage

Salvage logs are found in rivers and lakes and on ocean beaches, usually as a result of a natural event such as a landslide or storm. For example, the eruption of Mt. St. Helens deposited massive numbers of salvage logs on state-owned aquatic lands.

Generally, the department does not deal with salvage logs except in emergency situations because it is not cost effective and ownership of logs may not be clear.

Stray logs and wood debris can be hazardous to navigation. SEE ALSO: Navigation.

Their presence may also have negative environmental impacts, including:

- Loss of oxygen in the water column due to breakdown of organic debris.
- Turbidity caused when submerged logs are pulled up to the surface.
- Release of toxins from treated material.
- Scouring of beaches or shellfish beds resulting from wave or tidal action.

SEE ALSO: Environmental protection.

On the positive side, submerged logs may improve fish habitat by shading areas or replacing natural components that have been removed over time. Beached logs may also provide habitat for other aquatic animals, such as small crabs.

The department has authority to sell valuable materials, including stray logs, from state-owned aquatic lands. The department may also authorize other agencies to remove

valuable materials from state-owned aquatic lands without charge under public contract for channel or harbor improvements or flood control. SEE ALSO: Sales.

A log with a registered mark or brand is presumed to be the property of the brand owner. Unbranded or unmarked stray logs adrift on state waters become the property of the state when recovered.

Decisions regarding removal of stray logs and wood debris should focus on minimizing the state's liability and involvement. The department should only authorize removal of stray logs and wood debris that are imminently hazardous to navigation, endanger life, property, or the environment, or threaten publicly-owned resources.

To minimize the state's involvement, the department should encourage others to do the removal or salvaging whenever possible. For example, RCW 36.32.290 authorizes counties to remove drifts, jams, logs and debris for flood prevention purposes.

When no one else will remove logs or debris, the department should weigh the cost of removal against the risk. Unless the presence of the logs represents a hazard, logs and wood debris should remain in the natural environment as a benefit to fish and wildlife.

In the past, a log patrol program licensed operators to retrieve logs from all waters of the state. This program caused problems with local governments, ports, waterfront property owners and boat owners, and kept other groups from dealing with nuisance logs that threatened marinas, waterfront structures or navigational safety. In 1994, the legislature repealed these provisions.

The department should seek to reduce its liability by encouraging the removal of hazardous, stranded or stray logs and wood debris and by working in coordination with federal, state and local agencies and local salvagers. Allowing





salvagers to remove adrift logs at no cost encourages them to remove even marginally salvageable material because they receive all the proceeds from the sale. The benefit to the state is that hazardous floating material is removed from navigable waterways, reducing any potential liability if a boat runs into it or it washes into a dock or other structure.